



**LRB File No. 262-18**

**In the matter of an appeal to an adjudicator pursuant to s. 3-53 of *The Saskatchewan Employment Act***

**BETWEEN**

**Arch Transco Ltd., operating as Regina Cabs (“Regina Cabs” or “the company”)**

**-and-**

**Director of Occupational Health and Safety (“the director”)**

Representing the company: Edward Archibald

Counsel for the director: Steven Wang

**INTERIM DECISION RESPECTING NOTICE TO WORKERS**

Arch Transco Ltd. operates a taxi service as Regina Cabs. On October 11, 2018, an occupational health officer issued a Notice of Contravention (“the NOC”) directed to Regina Cabs requiring it to comply with provisions of *The Saskatchewan Employment Act* (“the Act”) and regulations under that Act pertaining to violence and harassment policies. The NOC, which was served on the company on November 15, 2018, included the following statement:

Regina Cabs...is deemed to be the employer of the taxi drivers and must create and implement a Harassment policy and Violence policy for all workers affiliated with Regina Cabs, inclusive of Taxi Licence Owners/Vehicle Operators and drivers for Regina Cabs....

The company appealed the NOC pursuant to s. 3-53(1) of the Act by notice of appeal filed December 6, 2018.

I was appointed as the adjudicator to hear the appeal on May 7, 2019.

According to s. 3-53(3)(a) of the Act, a notice of appeal must “set out the names of all persons who are directly affected by the decision that is being appealed”. Where the appeal is to be heard by an adjudicator, the registrar of the Labour Relations Board is then required by s. 4-4(1)(b)(ii)(B) to give notice of the hearing to “all persons who are directly affected by the decision being appealed”.

The notice of appeal did not set out the names of the “workers” referred to in the NOC (“the workers”). Consequently, they did not receive notice of the appeal.

On February 26, 2021, I convened a hearing by teleconference to hear representations on behalf of the company and the director with respect to the question of whether the workers should have been listed in the notice of appeal and whether they were entitled to notice.

The determination of this question hinges on whether the workers are “persons who are directly affected by the decision being appealed”. This term is defined in s. 3-52(2) of the Act:

(2) In this Division and in Part IV, “person who is directly affected by a decision” means any of the following persons to whom a decision of an occupational health officer is directed and who is directly affected by that decision:

- (a) a worker;
- (b) an employer;
- (c) a self-employed person;
- (d) a contractor;
- (e) a prime contractor;
- (f) an owner;
- (g) a supplier;
- (h) any other prescribed person or member of a category of prescribed persons;

but does not include any prescribed person or category of prescribed persons.

Both parties urged me to find that the workers at Regina Cabs are not included in the definition in relation to the NOC. The director’s position was advanced in two written submissions and orally during the hearing. The company agrees with the director’s position. That position asserts, and I agree with this aspect, that a person does not fall within the definition simply because they are directly affected by the decision being appealed. The definition adds another required element, that the decision be directed to, in this case, the workers.

The NOC is first and foremost directed to the company. However, according to its terms, and considered within the context of the legislative requirements for employers to create policies respecting harassment and violence, it is for the benefit of the workers intended to be protected by those policies. The question is, is the decision requiring the establishment of those policies directed to those workers within the meaning of s. 3-52(2).

The director and the company take the position that the NOC is not directed to the workers.

Prior to its commencement and during the course of the hearing, I asked the parties to address the interpretation of this provision in light of its application to other decisions of occupational health officers and the right of workers to participate in those appeals. I specifically asked for their positions on whether a worker who refers a matter to an occupational health officer under s. 3-36(1) of the Act alleging that an employer had taken a discriminatory action against the worker would have the right to participate in an appeal from the officer’s decision. This is of significance because many – perhaps most – adjudicator appeals under Part III of the Act involve such appeals and workers historically are allowed to participate fully as parties in those appeals and in fact to launch appeals related to adverse decisions.

The company chose not to take a position with respect to appeals under s. 3-36. The director’s second written submission addressed the question as follows:

3. The Director submits that the term “to whom a decision of an occupational health officer is directed” does not necessarily mean the decision directs the person “to do” a thing. Where a Notice of Contravention (“NOC”) directs a person to do a thing, it is simply one indicator as to whom the NOC is directed to.

4. In regards to NOC in the context of discriminatory actions pursuant to s. 3-36 of *The Saskatchewan Employment Act*..., the Director submits that those NOCs are also directed to the victim of the discriminatory action. The NOC in that context references the victim either explicitly or implicitly. That reference indicates the NOC is also directed to the victim, therefore the victim is a person who is directly affected by a decision pursuant to s. 3- 52(2) of the Act.

During the hearing, counsel for the director advanced the additional distinction between a s. 3-36 decision and the decision here, that being that discrimination cases necessarily involve an identifiable worker in relation to whom the order is made, while the decision here, and similar decisions, involve a potentially large bloc of workers, the make-up of which varies over time as workers leave the employer and new ones arrive. I don’t find this to be a compelling argument. At any time, whether at the point the decision under appeal is issued, at the time the appeal to the adjudicator is submitted, or at the time the adjudicator’s decision is made, the workers affected by the decision are readily identifiable. The fact the total cohort changes over time doesn’t seem to be a material factor. The rights, if they exist, don’t accrue to the group. They belong to individual workers who can be identified.

The first written submission from the director also pointed to the potentially “absurd number of parties” that could participate in an appeal. This again is not persuasive. If we consider the rights of any individual worker, the fact that many other workers have similar rights should not undermine or limit the rights of that worker. There would be ways to deal with the reality of a large number of participants in an appeal.

Nonetheless, I find the primary argument advanced on behalf of the director compelling, which is that the plain wording of the definition does not include a worker to whom the decision of the occupational health officer is not directed. I note that there are other potential decisions of an occupational health officer that would, or at least could, be directed to a worker in the ordinary sense. An example would be a decision made pursuant to s. 3-33(2) of the Act advising a worker that he or she is no longer entitled to refuse to perform work the worker considered unusually dangerous. However, the decision reflected in the NOC is not in a meaningful sense directed to the workers, even though it is issued for their benefit.

I leave for future determination whether workers who make referrals under s. 3-36(1) of the Act have the right to participate in appeals from the decisions made by occupational health officers under that section.

Finally, I offer the observation that the Lieutenant Governor in Council is empowered to make regulations pursuant to s. 3-83(1)(i) of the Act:

(i) for the purposes of subsection 3-52(2):

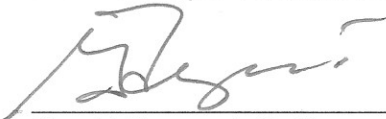
(i) prescribing persons or categories of persons as persons directly affected by a decision of an occupational health officer; and

(ii) prescribing persons or categories of person (sic) who are not persons directly affected by a decision of an occupational health officer;

It would appear to be open to the Executive Government to remove any ambiguity that may exist around the rights of workers to participate in appeals involving the determination of their interests.

In conclusion, the workers referenced in the NOC were not entitled to be listed in the notice of appeal or to receive notice of the appeal.

Dated at Regina, Saskatchewan, this 2<sup>nd</sup> day of May, 2021.

A handwritten signature in dark ink, appearing to read 'G. Tegart', is written over a horizontal line.

Gerald Tegart, Adjudicator